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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED ASSOCIATION OF JOURNEYMEN)
AND APPRENTICES OF THE PLUMBING &)
PIPE FITTING INDUSTRY OF THE)
UNITED STATES AND CANADA, LOCAL)
525, LAS VEGAS, NEVADA AFL-CIO,)
Petitioner,)
vs.)
BOMBARD MECHANICAL, LLC, a Nevada)
Limited Liability Company, and DOES I-V,)
ROES VI-X,)
Respondents.)

Case No. 2:19-cv-00431-JAD-CWH

**STIPULATED JOINT DISCOVERY
PLAN, SCHEDULING ORDER
SUBMITTED IN COMPLIANCE
WITH LOCAL RULE 26-1(b)
AND
REQUEST TO STAY DISCOVERY**

(Special Scheduling Review Requested)

Pursuant to Federal Rule of Civil Procedure (“FRCP”) 26 and Local Rule 26-1, the parties submit the following proposed Joint Discovery Plan and Scheduling Order, which contains a request to stay discovery until after the Court rules on Petitioner’s Motion to Compel Arbitration, which is currently due on or before July 20, 2019. See Court’s Order of 5/21/19 (ECF No. 13).

/ / /

1 **1. Initial Matters:**

2 **A. Meeting:** Pursuant to FRCP 26(f), the parties, by and through their respective
3 counsel, conferred telephonically on June 6, 2019. Eric Dobberstein and Francis Morton represented
4 Petitioner, and Gregory Kamer, Edwin Keller, and Dare Heisterman represented Respondents.

5 **B. Statement for Reasons Different Discovery Time Period:** Pursuant to LR
6 26-1(a), the parties assert that the unique procedural and substantive issues involved in this case
7 warrant a temporary stay of discovery to preserve client resources and to avoid engaging in potentially
8 unnecessary discovery. By way of a brief summary, Petitioner filed this action under Section 301 of
9 the Labor Management Relations Act, 29 U.S.C. § 185, and the United States Arbitration Act, 9 U.S.C.
10 § 4, seeking to compel arbitration of a union grievance against Respondent pursuant to a collective
11 bargaining agreement (“CBA”) between the parties pertaining to computer assisted drawing (“CAD”)
12 work and, concerning, in part, whether Respondent: (1) failed to secure workers in accordance with
13 the CBA; (2) failed to pay employees performing covered work in accordance with the CBA, and (3)
14 subcontracted covered work to non-signatory employers who failed to abide by the terms and
15 conditions of the CBA. See Petition to Compel Arbitration (“Petition”) (ECF No. 1) at 3, 5 & Exhibit
16 2 thereto. Respondent answered the Petition and asserted two counter claims. See Answer to
17 Petition, Counter Claims and Jury Demand (“Answer”) (ECF No. 9). In its Answer and Counter
18 Claims, Respondent contends, among other things, that Petitioner’s grievance is: not subject to
19 arbitration as it: (1) involves unfair labor practices charges filed by Respondent, dismissed by the
20 Regional Director of the National Labor Relations Board for Region 28, and pending appeal by
21 Respondent before the National Labor Relations Board General Counsel’s Office of Appeals, which
22 warrants at least a stay of the matter pending a ruling on Petitioner’s Motion to Compel; (2) is part of
23 a course of conduct made unlawful under Section 8(b)(4) of the National Labor Relations Act
24 (“NLRA”), 29 U.S.C. § 158(b)(4) and remediable by a private right of action under Section 303 of the

1 LMRA, 29 U.S.C. § 187; and (3) violates Petitioner's contractual obligations associated with an
2 October 28, 2013 decision of the Industrial Relations Council for the Plumbing and Pipefitting
3 Industry denying the Petitioner's request to add CAD work to Article II, Section 2.2 of the CBA,
4 which are subject to enforcement by a court of competent jurisdiction. Id. at 2-5, 10-14 & Exhibits
5 3-4 thereto.

6 The parties submit that under FRCP 26(c), a district court may stay discovery "for good cause
7 shown" with the power to stay proceedings being incidental to the power inherent in every court to
8 control the disposition of the causes on its docket with economy of time and effort for itself, for
9 counsel, and for litigants." Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). The Court has already set
10 a deadline of July 20, 2019 for the Petitioner to file a Motion to Compel Arbitration, which it intends
11 to do. See Court's Order of 5/21/19 (ECF No. 13). Respondent estimates needing 30 days to
12 respond to said Motion with the Petitioner requiring 21 days to submit its reply. Thus, the parties
13 believe the Motion would be fully briefed by September 10, 2019.

14 Petitioner believes a ruling in its favor on the Motion to Compel Arbitration is potentially
15 dispositive of most, if not all, of the issues in this matter and can be decided without additional
16 discovery. While Respondent does not agree with Petitioner's position, it contends that the unfair
17 labor practices pending before the National Labor Relations Board's Office of Appeals is a separate
18 basis warranting a stay of the matter.¹ Thus, for differing reasons, both parties concur that the results
19 of the Court's ruling on the upcoming Motion to Compel Arbitration will have a significant impact
20 on the need for and scope of discovery, such that a stay of discovery until the Court rules on said

21
22 ¹ N. California Dist. Council of Hod Carriers, Bldg. & Const. Laborers, AFL-CIO v. Opinski, 673
23 F.2d 1074, 1075 (9th Cir. 1982)(holding that where union has filed suit in district court on collective
24 bargaining agreement claim which is closely related to unfair labor practice charge employer has
already presented to NLRB, district court must exercise its discretion to determine whether
proceedings should be stayed until final disposition of the NLRB proceeding).

1 Motion will preserve client resources, avoid engaging in potentially unnecessary discovery, and is
2 consistent with the objectives of FRCP 1 to ensure a just, speedy, and inexpensive determination of
3 every action.

4 Thus, the parties have agreed and seek the Court's permission to stay the start of discovery
5 until after the Petitioner's Motion to Compel Arbitration is filed, briefed, and ruled upon by the Court
6 with the parties committing to submit an updated Joint Discovery Plan and Scheduling Order within
7 7 days after the Court issues its Order on Petitioner's Motion to Compel Arbitration setting forth the
8 specific dates for discovery deadlines proposed herein for the Court's approval.

9 **C. Certification as to Alternative Dispute Resolution:** The parties certify they
10 discussed the possibility of resolution of this case generally, and through means of alternative dispute
11 resolution. They believe an early neutral evaluation of this matter could be beneficial but note this
12 matter does not fall under one or more of the statutes listed in LR 16-6.

13 **D. Certification as to Alternative Forms of Case Disposition:** The parties
14 certify they have discussed consent to trial by magistrate judge and use of the short trial program.
15 While the parties are not in support of using the short trial program, they are open to exploring a trial
16 by a magistrate judge and agree to revisit the issue at a later point in the case. Pursuant to LR IB 2-
17 2(c), (d), the parties reserve the right to consent to a trial by a magistrate judge up to the date of trial.

18 **E. Other Discovery Issues:** Pursuant to FRCP 26(f)(3)(C) & (F), the parties
19 recognize the need for a protective order pertaining to Respondent's proprietary, confidential or
20 otherwise sensitive business documents, as well as personnel and pay records, that may be requested
21 during discovery. The parties shall further confer in an effort to stipulate to the terms of such a
22 protective order for the Court's review and approval.

23 **2. Initial Disclosures:** Pursuant to FRCP 26(a)(1), the parties shall serve initial
24 disclosures on or before June 20, 2019.

1 **3. Areas of Discovery:** The parties agree that the areas of discovery should include, but
2 not be limited to, all claims and defenses allowed pursuant to the FRCP. Other than staying the start
3 of discovery until after the Court has ruled on Petitioner's Motion to Compel Arbitration, currently
4 due on or before July 20, 2019, the parties do not foresee a need to conduct discovery in phases.

5 **4. Discovery Deadlines:** Local Rule 26-1(b) provides that "unless the court orders
6 otherwise, discovery periods longer than one hundred and eighty (180) days from the date the first
7 defendant answers or appears will require special scheduling review." The parties presently anticipate
8 that 180 days should be sufficient for conducting discovery, but for the reasons set forth in Section 1.
9 A. above, and in an effort to preserve client resources and to avoid engaging in potentially unnecessary
10 discovery, the parties have agreed to request a stay of the start of discovery until after Petitioner's
11 Motion to Compel Arbitration is filed, briefed, and ruled upon by this Court. Therefore, the parties
12 request a special scheduling review. Based upon the foregoing, the parties are proposing the following
13 schedule:

14 **A. Discover Cut-Off Date:** The parties propose discovery should commence the day
15 after this Court rules on Petitioner's Motion to Compel Arbitration. Therefore, the parties propose a
16 deadline of 180 days after the date this Court issues its Order on Petitioner's Motion to Compel
17 Arbitration.

18 **B. Amending Pleadings or Adding Parties:** The parties propose a deadline to file
19 motions to add parties or amend pleadings of 90 days before the discovery deadline proposed in
20 Section 4. A. above.

21 **C. Expert Disclosures:** The parties propose a deadline for expert disclosures of 60
22 days before the discovery deadline proposed in Section 4. A. above.

23 **D. Rebuttal Expert Disclosures:** The parties propose a deadline for rebuttal-expert
24 disclosures of 30 days before the discovery deadline proposed in Section 4. A. above.

1 **E. Interim Status Report:** The parties propose a deadline to file an interim status
2 report of 60 days before the discovery deadline proposed in Section 4. A. above.

3 **F. Dispositive Motions:** The parties propose a dispositive motion deadline of 30
4 days after the discovery deadline proposed in Section 4. A. above.

5 **G. Pre-Trial Order:** The parties propose a deadline for the joint pretrial order of 30
6 days after the dispositive motion deadline proposed in Section 4. F. above.²

7 **5. Court Conference:** If the Court has questions regarding the discovery process
8 proposed by the parties, the parties request an opportunity for a conference with the Court before
9 entry of a Scheduling Order. If the Court does not have questions, the parties do not request a
10 conference with the Court.

11 **6. Extension or Modifications of Discovery Dates:** Local Rule 26-4 governs
12 modifications or extensions of this Discovery Plan and Scheduling Order. According to the rule, “[a]
13 motion or stipulation to extend a deadline set forth in a discovery plan must be received by the court
14 no later than twenty-one (21) days before the expiration of the subject deadline.”

15 **7. Format of Discovery:** Pursuant to the electronic discovery amendments to the FRCP
16 effective December 1, 2006, the parties addressed e-discovery issues pertaining to the format of
17 discovery at the Rule 26(f) conference. The parties do not anticipate discovery of native files or
18 metadata at this time, but each party reserves the right to make a showing for the need of such
19 electronic data as discovery progresses.

20 The parties further certify pursuant to Local Rule 26-1(b) that they discussed the potential
21 submission of electronic evidence to the jury. The parties agreed to consider its use and discuss details
22 of its use closer to a trial date.

23
24 ² In the event either party files a dispositive motion, the requirement to file a pre-trial order shall be
suspended until 30 days after a decision on the motion or until further notice from this Court.

1 **8. Discovery Disputes:** All discovery disputes in this case shall be governed by the
2 provisions of Local Rule 26-7. The parties agree to employ good faith efforts to resolve all discovery
3 disputes prior to seeking intervention by the Court.

4 **9. FRCP 26(a)(3) Disclosures:** Disclosures required by FRCP 26(a)(3) and objection
5 thereto shall be included in the pretrial order.

6 DATED this 18th day of June 2019.

7 DOBBERSTEIN LAW GROUP

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8
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18 IT IS ORDERED that the parties' stipulation to stay discovery (ECF No. 20)
19 pending the outcome of petitioner's motion to compel arbitration is GRANTED. If
20 the motion to compel arbitration is denied, the parties must meet and confer and
file a proposed discovery plan with dates certain. The proposed discovery plan
must be filed within 21 days from the court's order on the motion to compel
arbitration.

21 DATED: June 20, 2019

22 
UNITED STATES MAGISTRATE JUDGE